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9
10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

13 CHAD BRAZIL, an individual, on his own
14 behalf and on behalf of all others similarly
15 situated,

16 Plaintiff,

17 v.

18 DOLE FOOD COMPANY, INC.,
DOLE PACKAGED FOODS, LLC,

19 Defendants.

Case No. CV12-01831 LHK

STATEMENT OF RECENT DECISION

Hearing Date: December 13, 2012

Time: 1:30 p.m.

Judge: Hon. Lucy H. Koh

Action Filed: April 11, 2012

Defendants Dole Food Company, Inc. and Dole Packaged Foods, LLC (“Dole”), through their undersigned counsel, submit this Statement of Recent Decision to bring to the Court’s attention a relevant judicial opinion that has been published since Dole filed its reply¹ in this case: *Astiana v. Hain Celestial Group, Inc.*, No. 11-6342 PJH, --F. Supp. 2d--, 2012 U.S. Dist. LEXIS 165368 (N.D. Cal. Nov. 19, 2012). The decision is attached as Exhibit A.

Plaintiff in *Astiana* alleged that Hain Celestial and JASON Natural Products improperly labeled their cosmetic products “all natural,” “pure natural,” and “pure, natural & organic.” Plaintiff alleged the term “natural” was false and misleading because the products contain artificial and/or synthetic materials. She asserted six causes of action under California law: (1) common law fraud, (2) unlawful business practices in violation of California’s Unfair Competition Law (“UCL”), (3) unfair business practices in violation of the UCL, (4) fraudulent business practices in violation of the UCL, (5) violation of California’s False Advertising Law, and (6) violation of California’s Consumer Legal Remedies Act. *See Astiana*, 2012 U.S. Dist. LEXIS 165368, at *2-3.

The court granted Defendants’ motion to dismiss, holding that, in deference to FDA, the court should not “make any independent determination of whether defendants’ use of ‘natural’ was false or misleading. Doing so would ‘risk undercutting the FDA’s expert judgments and authority.’” *Id.*, at *9 (quoting *Pom Wonderful LLC v. Coca-Cola Co.*, 679 F.3d 1170, 1178 (9th Cir. 2012)). Applying *Pom Wonderful* to Plaintiff’s California statutory and common law claims, the court reasoned that because the product labels at issue were comprehensively regulated by FDA and FDA declined to issue regulations regarding the term “natural,” the court should not decide whether the term is misleading or not. *Id.*, at *6-9. Thus, in deference to FDA, the court held that Plaintiff’s state law claims were barred under the primary jurisdiction doctrine.

¹ Dole’s reply was filed September 14, 2012. (Docket No. 37.)

1 Dated: November 29, 2012

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